

Mailed: December 27, 2005

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re IdeaStream Consumer Products LLC

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Serial No. 76543788

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James R. Menker of Smith, Gambrell & Russell LLP for IdeaStream Consumer Products LLC.

Georgia Ann Carty Ellis, Trademark Examining Attorney, Law Office 108 (Andrew Lawrence, Managing Attorney).

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Before Seeherman, Holtzman and Kuhlke, Administrative Trademark Judges.

Opinion by Holtzman, Administrative Trademark Judge:

An application has been filed by IdeaStream Consumer Products LLC to register the mark VAULTZ for "purses" in International Class 18.<sup>1</sup>

The trademark examining attorney has refused registration under Section 2(e)(4) of the Trademark Act on the ground that VAULTZ is primarily merely a surname.

Applicant has appealed. Both applicant and the examining attorney have filed briefs. An oral hearing was not requested.

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<sup>1</sup> Application Serial No. 76543788, filed September 9, 2003, asserting a bona fide intention to use the mark in commerce.

We reverse the refusal to register.

A term is primarily merely a surname if, when viewed in relation to the goods or services for which registration is sought, its primary significance to the purchasing public is that of a surname. See *In re United Distillers plc*, 56 USPQ2d 1220 (TTAB 2000). The burden is on the examining attorney to establish a prima facie case that a term is primarily merely a surname. In *re Etablissements Darty et Fils*, 759 F.2d 15, 225 USPQ 652 (Fed. Cir. 1985). Among the factors to be considered in determining whether a term is primarily merely a surname are (1) the degree of a surname's rareness; (2) whether anyone connected with applicant has that surname; (3) whether the term has any recognized meaning other than that of a surname; and (4) whether the term has the "look and sound" of a surname. See *In re Benthin Management GmbH*, 37 USPQ2d 1332, 1333 (TTAB 1995). See also *In re Gregory*, 70 USPQ2d 1792 (TTAB 2004).

As to the first factor, the examining attorney has conceded,<sup>2</sup> and the evidence shows, that VAULTZ is a rare surname. The examining attorney has submitted excerpts of stories from the

Nexis database and printouts from numerous Internet websites.<sup>3</sup>

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<sup>2</sup> Office action dated April 14, 2005 at 1.

The Nexis excerpts contain references to 12 individuals with the surname VAULTZ. We note that all but one of these stories appeared in a New Orleans newspaper, the *Times-Picayune*, and that they all concern local residents. While this evidence may show that VAULTZ might be perceived as a surname in New Orleans or perhaps Louisiana, it does not establish wide exposure of the name to the general public.

The examining attorney's Internet evidence includes pages from [www.whitepages.com](http://www.whitepages.com) and [www.ancestry.com](http://www.ancestry.com). The [whitepages.com](http://www.whitepages.com) printout contains eight listings for VAULTZ. The printout from [www.ancestry.com](http://www.ancestry.com) shows about 600 total listings for VAULTZ in four main categories: "Census"; "Birth, Marriage, & Death"; "Directories"; and "Newspapers." Two of these categories list information only from the 1800s and the early 1900s, i.e., the "Census" category contains information for the years 1860 to 1930, and the "Newspapers" category contains information for the years 1875 to 1914. About two-thirds of the total listings fall into those two categories. Obviously, census and newspaper evidence from over a hundred years ago does not reflect either current use as a surname or current perception of the term as a surname. While the other two databases ("Birth, Marriage and

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<sup>3</sup> In reviewing this evidence, we have disregarded multiple references to the same individuals in different Nexis stories or on different Internet websites.

Death" and "Directories") contain more recent occurrences, as applicant points out, there appear to be a number of duplicative listings within and/or between those two categories.

Accordingly, we have assumed that the "Directories" database includes the names of individuals covered in the other database. The "Directories" database shows 35 listings for VAULTZ. We note that 20 of those individuals are located in Louisiana.

Other Internet evidence submitted by the examining attorney consists of a Google search summary identifying four individuals with the name VAULTZ and a number of websites each containing one listing for VAULTZ.<sup>4</sup> Much of this evidence is of little probative value because the extent of public exposure to websites such as those hosting message boards or family reunions is likely to be quite limited.

By the examining attorney's own count, there are roughly a total of 60 listings of VAULTZ as a surname, in a country of over 290 million people. It is clear that VAULTZ is rare surname.<sup>5</sup> Further, the evidence as a whole does not convince us that more than a small segment of the general public has been exposed to the surname meaning of this term.

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<sup>4</sup> We have not considered websites with missing URLs, websites in foreign languages, and multiple references to the same individuals on different websites.

<sup>5</sup> We also note that applicant has submitted the relevant pages from the White Pages for Cleveland, Ohio (where applicant is located) and Northern Virginia, showing no listings for the name VAULTZ.

It is true, as the examining attorney points out, that even a rare surname is unregistrable if its primary significance to purchasers is as a surname. In *re Industrie Pirelli Societa per Azioni*, 9 USPQ2d 1564 (TTAB 1988). However, the rarer the surname, the less likely it is that the term will be perceived as primarily merely a surname. In *re Garan Inc.*, 3 USPQ2d 1537 (TTAB 1987).

As to the second factor, applicant has submitted a declaration by its chief operating officer, Daniel Perella, stating that no one associated with applicant has the surname VAULTZ.

The third factor is whether the term has another recognized meaning. While the examining attorney emphasizes the lack of a dictionary definition for VAULTZ,<sup>6</sup> the analysis does not end there. Applicant argues that VAULTZ is suggestive term in relation to its goods, purses. In this regard, applicant has submitted a dictionary definition of "vault" as meaning, "a room or compartment, often built of steel, for the safekeeping of valuables: a bank vault."<sup>7</sup> This would suggest that the purses

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<sup>6</sup> The examining attorney asks the Board to take judicial notice of the printout attached to her brief from [www.onelook.com](http://www.onelook.com) showing no entry for "vaultz." This Internet evidence is untimely and not appropriate for judicial notice. There is no indication as to what particular dictionaries are contained on the website or whether any of the dictionaries exist in printed form. See *In re Total Quality Group Inc.*, 51 USPQ2d 1474 (TTAB 1999).

<sup>7</sup> *The American Heritage Dictionary of the English Language, Third Edition* (1992).

sold under the mark will be solidly constructed and contain certain features that will protect their contents. A vault is used for storing valuables, and a purse stores the owner's valuables. We find this to be a very plausible meaning of the term in relation to applicant's goods. Thus, VAULTZ, the phonetic equivalent of "vaults," does have another meaning in relation to applicant's goods.

Finally, we consider whether VAULTZ has the look and sound of a surname. As stated in *Ex parte Rivera Watch Corp.*, 106 USPQ 145, 149 (Comm'r Pats. 1955):

There are some names which by their very nature have only a surname significance even though they are rare surnames. "Seidenberg," if rare, would be in this class. And there are others which have no meaning--well known or otherwise--and are in fact surnames which do not, when applied to goods as trademarks, create the impression of being surnames.

While the examining attorney argues that VAULTZ has the look, feel and pronunciation of a surname, there is no evidence properly of record to support this contention.<sup>8</sup> Further, because VAULTZ is the phonetic equivalent of a suggestive term, it would not be perceived as a surname, and thus would not have the look

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<sup>8</sup> The examining attorney attached to her brief a printout from [www.rhymezone.com](http://www.rhymezone.com) to show that other surnames, in particular, "Shultz" and "Holtz" end in "ltz." This evidence is improper subject matter for judicial notice. Nevertheless, even if we considered the evidence, it would not be persuasive. The existence of two other surnames, one of which itself is identified as a rare surname, does not convince us that "ltz" is a typical structure of a surname or that any term ending in "ltz," for example BOLTZ for a hardware store or COLTZ for a horse farm, would be perceived as a surname.

or sound of a surname. Instead, VAULTZ has the look and feel of a misspelling of the non-surname word "vaults."

We find that VAULTZ falls into the category of terms which are surnames but which, because of its rarity and suggestiveness in relation to applicant's goods, would not create the impression of being a surname.

Decision: The refusal to register under Section 2(e)(4) of the Trademark Act is reversed.